

3. On August 19, 2013, the agency sent Petitioner a notice to remind her to complete her Six Month Report Form when she receives it, sometime in the next 30-days. (Exhibit 2, pgs. 17-18)
4. On August 20, 2013, the Petitioner contacted Milwaukee Early Care Administration (MECA) to advise them that she had moved and that she was changing child care providers. (Testimony of Petitioner; Exhibit 2, pg. 9)
5. MECA did not update the Petitioner's address in the CARES system or note the change in the case comments. (Testimony of Ms. May; Exhibit 2, pg. 9)
6. On September 23, 2013, the agency sent Petitioner the SMRF to complete, with a due date of October 5, 2013, but it was sent to Address A. (Exhibit 2, pgs. 23-36)
7. On October 16, 2013, the agency received returned mail, likely the SMRF that was mailed to the Petitioner. The agency called the Petitioner to confirm/update her address. (Exhibit 2, pg. 9)
8. On October 18, 2013, the agency sent the Petitioner a notice advising her that her child care benefits would be ending on October 31, 2013, because she did not complete the SMRF. This notice was sent to Address A. (Exhibit 2, pgs. 37-39)
9. On December 17, 2013, the Petitioner called MECA to inquire why her childcare benefits ended and was told about the incomplete SMRF. On this same date, the Petitioner went to the agency to request a childcare renewal. (Exhibit 2, pg. 9)
10. On December 18, 2013, the agency sent the Petitioner a notice indicating that she would be eligible for child care benefits effective December 1, 2013. (Exhibit 2, pgs. 44-47)
11. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 28, 2014. (Exhibit 1)

DISCUSSION

Is Petitioner's Appeal Timely?

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1); Wis. Admin Code §HA 3.05(3). A negative action can be the denial of an application, or as in this case, the termination of benefits.

The agency sent the Petitioner a notice advising her that her childcare benefits were ending, but they knowingly sent the notice to the wrong address. Indeed, the agency sent the notice to the same address, from which it received returned mail. Because the Petitioner did not receive the notice advising her of both the termination of her child care benefits and her appeal rights, it is found that her appeal is timely.

Did the Agency Correctly Terminate the Petitioner's Child Care Benefits?

Child Care administrative agencies are required to re-evaluate a parent's eligibility for child care benefits, at least once every six months. Wis. Admin. Code §DHS 201.04(3)(b); *Wisconsin Shares Child Care Assistance Manual (CCM) §1.15.3*

Any information for which the agency requests verification to complete that re-evaluation must be made in writing. *CCM §1.7.4* If the applicant/participant is able to provide verification, but refuses or fails to provide it, the application may be denied or the case closed. *CCM §1.7.7*

In the case at hand, the Petitioner testified credibly that she advised MECA of her address change. Her testimony is corroborated by a case comment dated August 20, 2013, showing that she had reported a change in child care providers.

Even though the Petitioner reported the change in her address, the MECA staff person did not note this in CARES, even though the staff person was clearly able to enter notes in the Case Comments. The SMRF was subsequently mailed to the wrong address and returned to the agency. There is no indication in the record that any effort was made to resend the SMRF. Consequently, the Petitioner did not receive the request for information in the SMRF.

Because Petitioner did not receive a written request for the SMRF, the agency incorrectly ended her childcare benefits on October 31, 2013.

It should be noted that the Petitioner demonstrated that she probably would have timely returned the SMRF, had she received it, given that that she went to the agency to re-apply for benefits, the very day she called to inquire about the November 2013 loss in benefits. (See Exhibit 2, pg. 9)

CONCLUSIONS OF LAW

1. Petitioner's appeal is timely.
2. The agency did not correctly end Petitioner's childcare benefits.

THEREFORE, it is

ORDERED

That the agency re-instate Petitioner's childcare November 1, 2013 through November 30, 2013. The agency shall take all administrative steps necessary to complete these tasks within 10 days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that

Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of May, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 9, 2014.

Milwaukee Enrollment Services
Child Care Benefits